

AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1211

Introduced by Assembly Member La Suer

February 23, 2001

An act to repeal and add Section 1203.047 of the Penal Code, relating to high technology crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 1211, as amended, La Suer. High technology crimes: probation.

Existing law specifies certain circumstances where a person convicted of a high technology crime, as specified, may be granted probation. Existing law also provides that the period of probation shall not be less than 3 years.

This bill would repeal these provisions, and ~~provide instead for a broader definition of high technology crimes for which probation may be granted, and specify conditions that would prohibit granting probation. This bill would require that the period of probation not be less than 60 months~~ *instead provide for the imposition of specified conditions of probation for persons convicted of crimes accomplished with the aid of a computer, computer network, electronic mail, or the Internet.* This bill would require restitution to crime victims, as specified, and would make technical changes to criminal procedures involving high technology crimes. This bill would impose a laboratory analysis fee, as specified, which fee would be deposited into the High Technology ~~Theft Apprehension and Prosecution Program~~ *Laboratory Trust Fund as established by this bill.*

By increasing the costs to local governments for increased probation periods, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *The Legislature finds that rapid technological*
2 *change has provided new means of committing certain crimes and*
3 *created new offenses. Although the Legislature has passed laws*
4 *defining that illegal conduct, it is equally important to provide*
5 *courts and probation officers with tools they can use to discourage*
6 *recidivism, foster rehabilitation, and protect the public. The*
7 *current Section 1203.047 provides a blunt instrument to achieve*
8 *these objections for a small segment of high-technology offenders.*
9 *This act repeals that statute and replaces it with a more*
10 *comprehensive scheme.*

11 *This act requires courts, as part of imposing terms of probation,*
12 *to prohibit defendants from engaging in various acts and practices*
13 *during their probation period. Some of the acts prohibited by this*
14 *act, including concealing the source of electronic*
15 *communications, communicating in real-time over the Internet, as*
16 *in “chat,” and the use of encryption, are targeted because the acts*
17 *enable new offenses or the concealment of same. Still other*
18 *provisions, including limiting the business activities of computer*
19 *intruders, serve to steer offenders away from activities associated*
20 *with their offenses that may predispose them to repeat their crimes*
21 *or provide them with the tools and information they need to do so.*
22 *Business activities may also interfere with offenders’*
23 *rehabilitation and reintegration into the community by appearing*
24 *to reward them for their crimes and discouraging them from*
25 *seeking other gainful employment. Some of the disclosures*
26 *required by this act, including requiring defendants convicted of*
27 *auction fraud to reveal their convictions when selling items on the*



1 *Internet, will protect the public and make it more difficult for*
2 *offenders to commit new crimes. Each of the restrictions on an*
3 *offender's activities and the compelled disclosure of certain facts*
4 *are necessary to achieve the purposes set forth above.*

5 *The Legislature also recognizes that the investigation and*
6 *prosecution of these crimes exacts an unusually heavy toll on*
7 *victims and law enforcement. Victims may need to halt their*
8 *business activities to preserve evidence and secure their computers*
9 *from further intrusion. Victims may lose customers and business*
10 *opportunities, be required to compensate third parties, and suffer*
11 *other losses not directly connected with the offense. This act*
12 *requires offenders to make restitution for direct and indirect losses*
13 *alike. Law enforcement may incur tens of thousands of dollars in*
14 *costs to locate, seize, preserve, analyze, and present computer*
15 *evidence. This legislation imposes laboratory analysis fee to be*
16 *deposited into the High Technology Laboratory Trust Fund to be*
17 *administered by the Office of Criminal Justice Planning.*

18 SEC. 2. Section 1203.047 of the Penal Code is repealed.

19 ~~SEC. 2.~~

20 SEC. 3. Section 1203.047 is added to the Penal Code, to read:
21 ~~1203.047. (a) If a person is granted probation for a high~~
22 ~~technology crime as defined in this section, the terms of probation~~
23 ~~shall include all of the following:~~

24 ~~(1) A minimum period of probation of 60 months, which may~~
25 ~~include a period of summary probation as appropriate.~~

26 ~~(2) A criminal court protective order prohibiting the defendant,~~
27 ~~during the period of probation, from using the particular~~
28 ~~technology he or she used to commit the crime, unless the court~~
29 ~~makes a finding on the record that the proposed use would not pose~~
30 ~~a risk, economic or otherwise, to the public. The order shall also~~
31 ~~prohibit the possession of technological tools similar to those used~~
32 ~~to commit the crime, prohibit the defendant from using any name~~
33 ~~or electronic mail identity other than that authorized by the court~~
34 ~~and made part of the sentencing order, and prohibit the defendant~~
35 ~~from taking any steps to conceal the source, destination, and~~
36 ~~content of any electronic communication transmitted by the~~
37 ~~defendant.~~

38 ~~(3) Payment of full restitution to the victim, including the cost~~
39 ~~of each victim's investigation, the cost to the victim of storing~~

~~1 contraband or evidence if stored in a commercial storage facility;
2 and cost of actual current and future economic damages.~~

~~3 (4) Booking the defendant within one week of sentencing if the
4 defendant has not already been booked.~~

~~5 (5) In addition to any other fine, restitution fine or order of
6 restitution, payment of a minimum forensic computer laboratory
7 analysis fee by the defendant of the reasonable costs incurred for
8 laboratory analysis, not to exceed twenty-five thousand dollars
9 (\$25,000) per case. The fee may exceed one thousand dollars
10 (\$1,000) even though the defendant is convicted only of a
11 misdemeanor.~~

~~12 If, after a hearing in court on the record, the court finds that the
13 defendant does not have the ability to pay, the court may reduce or
14 waive this fee. The moneys deposited with the county treasurer
15 pursuant to this section shall be transferred, once a month, to the
16 Controller for deposit in the High Technology Theft Apprehension
17 and Prosecution Program Trust Fund as established by Section
18 13848.4.~~

~~19 (b) The fact that the crime committed was a high technology
20 crime shall be alleged in the accusatory pleading, and either
21 admitted by the defendant in open court, or found to be true by the
22 jury trying the issue of guilt or by the court where guilt is
23 established by plea of guilt or nolo contendere or by trial by the
24 court sitting without a jury. It can be alleged at any time whether
25 or not proved at the preliminary hearing or before the Grand Jury.~~

~~26 (c) Probation shall not be granted to any person convicted of a
27 high technology crime where that person is found to have suffered
28 a previous conviction of a high technology crime, within five years
29 of the commission of the crime being sentenced, except in unusual
30 cases where the interests of justice would best be served if the
31 person is granted probation. If probation is granted, the court shall
32 specify on the record and shall enter on the minutes the
33 circumstances indicating that the interests of justice would best be
34 served by such a disposition. The fact that both the current
35 conviction and a particular prior conviction was for a high
36 technology crime shall be alleged in the accusatory pleading, and
37 either admitted by the defendant in open court, or found to be true
38 by the jury trying the issue of guilt or by the court where guilt is
39 established by plea of guilt or nolo contendere or by trial by the
40 court sitting without a jury. It can be alleged at any time whether~~

1 or not proved at the preliminary hearing or before the Grand Jury.
2 The fact that the previous conviction was for a high technology
3 crime need not have been alleged, or proven, in the prior case.

4 ~~(d) High technology crimes are those crimes in which~~
5 ~~electronic or computer related technology is used by the defendant~~
6 ~~as an instrument in committing, or assisting in the commission of,~~
7 ~~a crime, or which is the target of the defendant's criminal act. High~~
8 ~~technology crimes include, but are not limited to, the following~~
9 ~~offenses:~~

10 ~~(1) White-collar crime, such as check, automated teller~~
11 ~~machine, and credit card fraud, committed by means of electronic~~
12 ~~or computer related media.~~

13 ~~(2) Unlawful access, destruction of or unauthorized entry into~~
14 ~~and use of private, corporate, or government computers and~~
15 ~~networks, including wireless and wireline communications~~
16 ~~networks and law enforcement dispatch systems, and the theft,~~
17 ~~interception, manipulation, destruction, or unauthorized~~
18 ~~dislosure of data stored within those computers and networks.~~

19 ~~(3) Money laundering accomplished with the aid of computer~~
20 ~~networks or electronic banking transfers.~~

21 ~~(4) Theft and resale of telephone calling codes, theft of~~
22 ~~telecommunications service, theft of wireless communication~~
23 ~~service, and theft of cable television services by manipulation of~~
24 ~~the equipment used to receive those services.~~

25 ~~(5) Software piracy and other unlawful duplication of~~
26 ~~information.~~

27 ~~(6) Theft and resale of computer components and other high~~
28 ~~technology products produced by the high technology industry.~~

29 ~~(7) Remarketing of computer hardware.~~

30 ~~(8) Counterfeiting of all types of digitally stored data~~
31 ~~containing registered trademark or service marks.~~

32 ~~(9) Theft of trade secrets.~~

33 *1203.047. (a) (1) This section applies where probation is*
34 *granted to a defendant convicted of a violation of Section 502,*
35 *502.7, 593d, or 593e. It also applies to a conviction of Section*
36 *288.2, 311.1, 311.2, 311.3, 311.4, 311.11, 313.1, 350, 422, 474,*
37 *475, 476, 484e, 484g, 529, 529.5, 530.5, 535, or 646.9, where the*
38 *crime was accomplished with the aid of a computer, computer*
39 *network, electronic mail, or the Internet.*

40 *(b) The term of probation shall be not less than 36 months.*

1 (c) The defendant shall make full restitution to the victim for all
2 losses as otherwise provided for by law. In calculating those losses,
3 the court shall include all indirect and direct economic loss
4 suffered by the victim, including, but not limited to, lost profits,
5 costs reasonably incurred by the victim of storing evidence in a
6 commercial storage facility, costs reasonably incurred by the
7 victim or others to restore or repair computers and computer
8 networks damaged or otherwise altered or impaired as a result of
9 the offense, and losses reasonably incurred by the victim in
10 compensating, paying damages to, or indemnifying third parties
11 based on losses caused by the offense.

12 (d) The court may impose terms of probation that reasonably
13 restrict the use by the defendant of technology that the defendant
14 used to commit the offense.

15 (e) The court shall impose the following terms of probation:

16 (1) If the defendant is convicted of violating Section 422, 529,
17 or 646.9 or any other felony violation where the defendant
18 concealed the source, destination, or content of an electronic
19 communication in committing or aiding in the commission of the
20 offense:

21 (A) The defendant shall not intentionally conceal the source,
22 destination, or content of any electronic communication
23 transmitted or otherwise sent by the defendant.

24 (B) The defendant shall not provide false information about his
25 or her identity to any provider of an “electronic communications
26 service” as defined under paragraph (15) of Section 2510 of Title
27 18 of the United States Code when purchasing, subscribing to, or
28 agreeing to purchase or subscribe to any service from that provider
29 that allows the defendant to send or receive electronic
30 communications.

31 (C) The defendant shall disclose to the defendant’s probation
32 officer all electronic mail accounts, all Internet accounts, and any
33 other means of access to any computer or computer network, all
34 passwords and access codes. The defendant shall consent to the
35 search of that electronic mail and Internet accounts at any time
36 and the seizure of any information or data contained therein
37 without a search warrant or probable cause.

38 (2) If the defendant is convicted of any offense involving fraud
39 in the sale or offering for sale of any item via the Internet,

1 *including, but not limited to, any violation of Section 535 involving*
2 *the Internet:*

3 *(A) In any advertisement, notice, or offer for sale or purchase*
4 *displayed by the defendant on the Internet, the defendant shall*
5 *prominently disclose his or her true identity, including residence*
6 *address and telephone number, along with the fact that the*
7 *defendant is on probation for having committed that offense.*

8 *(B) The defendant shall not intentionally conceal the source,*
9 *destination, or content of any electronic communication*
10 *transmitted or otherwise sent by the defendant.*

11 *(C) The defendant shall not provide false information about his*
12 *or her identity to any provider of an “electronic communications*
13 *service” as defined under paragraph (15) of Section 2510 of Title*
14 *18 of the United States Code when purchasing, subscribing to, or*
15 *agreeing to purchase or subscribe to any service from that provider*
16 *that allows the defendant to send or receive electronic*
17 *communications.*

18 *(D) The defendant shall disclose to the defendant’s probation*
19 *officer all electronic mail accounts, all Internet accounts, and any*
20 *other means of access to any computer or computer network, all*
21 *passwords and access codes. The defendant shall consent to the*
22 *search of that electronic mail and Internet accounts at any time*
23 *and the seizure of any information or data contained therein*
24 *without a search warrant or probable cause.*

25 *(3) If the defendant is convicted of violating Section 502 or*
26 *502.7:*

27 *(A) The defendant shall not do any of the following:*

28 *(i) Provide computer or information security services to the*
29 *public, including securing or testing the security of computers or*
30 *computer networks, for compensation.*

31 *(ii) Disclose or provide information about the security of*
32 *computers or computer networks to others for compensation.*

33 *(iii) Deliver presentations concerning the security of*
34 *computers or computer networks to the public or others for*
35 *compensation.*

36 *(iv) Possess software used primarily to gain unauthorized*
37 *access to computers or computer networks or to ascertain means*
38 *of gaining that unauthorized access.*

1 (v) Possess software designed to encrypt data or electronic
2 communications except as allowed by the court after notice to the
3 prosecution and a hearing.

4 (B) The defendant shall not intentionally conceal the source,
5 destination, or content of any electronic communication
6 transmitted or otherwise sent by the defendant.

7 (C) The defendant shall not provide false information about his
8 or her identity to any provider of an “electronic communications
9 service” as defined under paragraph (15) of Section 2510 of Title
10 18 of the United States Code when purchasing, subscribing to, or
11 agreeing to purchase or subscribe to any service from that provider
12 that allows the defendant to send or receive electronic
13 communications.

14 (D) The defendant shall disclose to the defendant’s probation
15 officer all electronic mail accounts, all Internet accounts, and any
16 other means of access to any computer or computer network, all
17 passwords and access codes. The defendant shall consent to the
18 search of that electronic mail and Internet accounts at any time
19 and the seizure of any information or data contained therein
20 without a search warrant or probable cause.

21 (4) If the defendant is convicted of violating Section 350, the
22 defendant shall not:

23 (A) Infringe copyrights for software or intentionally aid in the
24 infringement of those copyrights by others.

25 (B) Engage in the sale or distribution of software except upon
26 court approval after notice and hearing.

27 (5) If the defendant is convicted of violating Section 593d or
28 593c:

29 (A) The defendant shall not possess an e-prom burner.

30 (B) The defendant shall not possess software designed to
31 facilitate the programming of cable e-prom chips or satellite
32 access cards.

33 (C) The defendant shall not possess any addressable
34 multichannel video or information device, as defined in
35 subdivision (b) of Section 593d, not assigned to the defendant’s
36 residence by the multichannel video or information provider, as
37 defined in subdivision (i) of Section 593g. The defendant shall not
38 possess more than one direct broadcast satellite system access card
39 per satellite system receiver allowed under this subdivision.



1 (6) If the defendant is convicted of violating Section 288.2,
2 311.1, 311.2, 311.3, 311.4, 311.11 or 313.1, and the violation was
3 accomplished with the aid of a computer, computer network,
4 electronic mail, or the Internet:

5 (A) The defendant shall not intentionally conceal the source,
6 destination, or content of any electronic communication
7 transmitted or otherwise sent by the defendant.

8 (B) The defendant shall not knowingly engage in any real-time
9 communication over the Internet with anyone who identifies
10 himself or herself as a minor or anyone whom the defendant knows
11 to be a minor, including “chat” and “instant messaging” forms of
12 communication, unless the court or the probation department has
13 allowed the defendant to communicate with that minor. This
14 provision does not prohibit the use of electronic mail.

15 (C) The defendant shall not knowingly engage in any
16 communication over the Internet, including by electronic mail,
17 with anyone concerning the current or planned possession,
18 production, preparation, publication, exchange, exhibition, or
19 distribution by the defendant or any party to that communication
20 of any matter depicting a person under 18 years of age personally
21 engaging in or personally simulating sexual conduct as defined in
22 Section 311.4.

23 (D) The defendant shall participate in a counseling program
24 relating to the commission of the offense by that defendant.

25 (E) The defendant shall not provide false information about his
26 or her identity to any provider of an “electronic communications
27 service” as defined under paragraph (15) of Section 2510 of Title
28 18 of the United States Code when purchasing, subscribing to, or
29 agreeing to purchase or subscribe to any service from that provider
30 that allows the defendant to send or receive electronic
31 communications.

32 (F) The defendant shall disclose to the defendant’s probation
33 officer all electronic mail accounts, all Internet accounts, and any
34 other means of access to any computer or computer network, all
35 passwords and access codes. The defendant shall consent to the
36 search of that electronic mail and Internet accounts at any time
37 and the seizure of any information or data contained therein
38 without a search warrant or probable cause.

1 (G) The defendant shall not possess software designed to
2 encrypt data or electronic communications except as allowed by
3 the court after notice to the prosecution and a hearing.

4 (7) If the defendant is convicted of a violation of Section 474,
5 475, 476, 484e, 484g, 529, 529.5, or 530.5, and the violation was
6 accomplished with the aid of a computer, computer network,
7 electronic mail, or the Internet:

8 (A) The defendant shall not possess software designed for
9 manufacturing checks or blank check paper.

10 (B) The defendant shall not possess a scanner or digital
11 camera.

12 (C) The defendant shall not possess an access card reader or an
13 access card encoder.

14 (D) The defendant shall obtain approval from the probation
15 department prior to accepting any employment that includes the
16 legitimate acquisition of personal identifying information.

17 (E) The defendant shall not intentionally conceal the source,
18 destination, or content of any electronic communication
19 transmitted or otherwise sent by the defendant.

20 (F) The defendant shall not provide false information about his
21 or her identity to any provider of an “electronic communications
22 service” as defined under paragraph (15) of Section 2510 of Title
23 18 of the United States Code when purchasing, subscribing to, or
24 agreeing to purchase or subscribe to any service from that provider
25 that allows the defendant to send or receive electronic
26 communications.

27 (G) The defendant shall disclose to the defendant’s probation
28 officer all electronic mail accounts, all Internet accounts, and any
29 other means of access to any computer or computer network, all
30 passwords and access codes. The defendant shall consent to the
31 search of that electronic mail and Internet accounts at any time
32 and the seizure of any information or data contained therein
33 without a search warrant or probable cause.

34 (f) (1) The High Technology Laboratory Trust Fund is hereby
35 created as a special account within the General Fund, to be
36 administered by the Office of Criminal Justice Planning. Money in
37 the fund shall, upon appropriation by the Legislature, be used for
38 the purposes of defraying the costs incurred for computer forensic
39 analysis or other analysis of electronic or computer evidence

1 *related to investigating and prosecuting high-technology offenses,*
2 *as those offenses are specified in subdivision (h).*

3 (2) *In addition to any other fine, restitution fine or order of*
4 *restitution, the court shall order payment by the defendant*
5 *convicted of an offense described in subdivision (a) of a minimum*
6 *forensic computer laboratory analysis fee for the reasonable costs*
7 *incurred for computer forensic analysis or other analysis of*
8 *electronic or computer evidence, not to exceed twenty-five*
9 *thousand dollars (\$25,000) per case, including cases where the*
10 *defendant is not convicted of a felony but is convicted of a*
11 *misdemeanor. The court may reduce or waive this fee upon a*
12 *finding that the defendant does not have the ability to pay that fee.*
13 *The moneys deposited with the county treasurer pursuant to this*
14 *section shall be transferred to the Controller for deposit in the*
15 *High Technology Laboratory Trust Fund. This fee shall not be*
16 *assessed unless the request for the fee is included in an indictment*
17 *or in an information or other accusatory pleading filed before*
18 *trial.*

19 (g) *If the defendant is convicted of a high-technology related*
20 *offense not otherwise specified in this section and the offense is*
21 *designated as high-technology related offense in an indictment or*
22 *in an information or other accusatory pleading filed before trial,*
23 *the court shall impose as a term of probation, the fee specified in*
24 *subdivision (f), and may impose terms of probation that reasonably*
25 *restrict the use by the defendant of technology that the defendant*
26 *used to commit the offense.*

27 (h) *For purposes of this section, a “high-technology related*
28 *offense” is an offense committed with the aid of a computer,*
29 *computer network, electronic mail, or the Internet.*

30 (i) *For purposes of this section, the terms “computer system”*
31 *and “computer network” are to be construed as they are defined*
32 *in Section 502.*

33 ~~SEC. 3.~~

34 SEC. 4. No reimbursement is required by this act pursuant to
35 Section 6 of Article XIII B of the California Constitution because
36 the only costs that may be incurred by a local agency or school
37 district will be incurred because this act creates a new crime or
38 infraction, eliminates a crime or infraction, or changes the penalty
39 for a crime or infraction, within the meaning of Section 17556 of
40 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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